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Case Study: IP Enforcement Process in Lao PDR

More and more multinational corporations are seeking to grow their business in Lao PDR, also commonly known as Laos. With annual GDP growth rates of over 8% (according to the latest World Bank figures), it is easy to understand why so many companies are evaluating their options in this growing market. But when entering any new market, companies also need to consider how best to protect and enforce their intellectual property rights. This article reveals some important aspects about IP infringement and the enforcement process for brand owners operating in Lao PDR.

Market Survey

In early 2013, Tilleke & Gibbins sent in-house investiga-

nutrition, and health industry learned that counterfeit products bearing its well-recognized brand and packaging were widespread in Savannakhet and Champasak provinces in southern Lao PDR. As part of a thorough investigation on behalf of this company, Tilleke & Gibbins investigators visited the shops selling counterfeit products to obtain photographs, video clips, and products, all of which served as supporting evidence of the infringing activities. During the investigation, the Lao DIP collaborated with the brand owner to assist in carrying out this anticounterfeiting operation.

Government Collaboration

Two weeks later, a meeting was held with Mr. Sitha Phouyavong, Director-General of the DIP, along with his team at the DIP. He invited officers from the Ministry of Industry and Commerce, the Ministry of Finance, and the Ministry of Science and Technology (which handle trading, tax, and IP-related issues), as well as police, public prosecutors, and judges, to answer questions and provide clarification on the issues. This proved helpful and productive for the brand owner, as it provided an opportunity to seek direct assistance in pursuing the appropriate measures against illegal traders in Lao PDR. It also allowed for a detailed discussion about the procedures for anticounterfeiting administrative proceedings with experienced and knowledgeable officials—an important step when enforcing IP rights in an unfamiliar jurisdiction.



tors to conduct a market survey of counterfeit goods in Vientiane, the capital city of Lao PDR. The investigation revealed San Jiang market and Talat Sao market to be the key offending areas, with a plethora of counterfeit products (including clothing, accessories, electronic devices, mobile phones, and food) widely available for purchase. After making these discoveries, an IP infringement alert was distributed to brand owners whose rights were being violated.

Investigation

A few months ago, a global corporation in the food,

Enforcement Process

After the officials reviewed the presentation and considered the supporting information and evidence, they deemed the brand owner's requests and claims to be acceptable. Procedurally, the next step is for the DIP's Anticounterfeit Committee to decide on the appropriate actions to take. Once this decision has been made, the Provincial Administrative Office will carry out those actions accordingly, at the Committee's order.

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The Committee will usually request the Provincial Administrative Office to send its officers to the illegal traders' shops and hand them official Warning Notices. The officers will carry out inspections to evaluate the types of counterfeit products they have on display and in stock, estimate the amounts and values, and take notes for future reference. The officers will also demand that the traders reveal information about the sources or suppliers of their counterfeit products. The traders will then be asked to remove all counterfeit products from their shops before the officers revisit their shop in the next five to seven days. In case the officers find counterfeit items in their shops during the next visit, they will seize all of the counterfeit products and coordinate with the IP owner to discuss further criminal and/or civil action. A brand owner may also request the Provincial Administrative Office to send Warning Notices to other shops selling similar goods in the same market, as well as shops in other markets in other cities located in that province. This proactive measure exists because officers anticipate the counterfeiters may simply try to contact other shops and sell the counterfeit products to them. To protect the public interest, authorities will tend to alert all shop owners in their jurisdiction about the issue at the same time, as this will prevent the original infringer from easily reselling the counterfeit products to other shops. Consequently, the infringer is left with the options of returning the counterfeit

products to the supplier or simply destroying them.

Zero-Tolerance Policy

The anticounterfeiting administrative proceeding in Lao PDR uses settlement mediation or negotiation as a mandatory preliminary step. But if an offender is offered a chance for dispute settlement and refuses to comply or simply ignores the demands of the officials, then a zero-tolerance policy will be implemented immediately. If, by the given deadline, the officers revisit the shop that received the Warning Notice and find that it is still selling counterfeit products, all of the counterfeit products will be seized without hesitation. It is important to note that if the shop has stopped selling the counterfeit products after the warning, but the brand owner finds counterfeit products at the shop again in the next three to six months, it is possible to request the Provincial Administrative Office to raid the shop without further warning.

Important First Steps

Based on this experience, IP enforcement in Lao PDR looks promising for business owners. The DIP and other related government agencies, however, need more experience to improve their practice, and they recognize this need to build their enforcement capacity. Still, these are important first steps toward building an effective IP-enforcement regime in the country, and brand owners should be encouraged by these recent developments. 🚀